In the Court of Appeals of the State of Alaska

Casey James Donn,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-12777**

Order
Petition for Rehearing

Date of Order: **4/13/2021**

Trial Court Case No. **3PA-08-02926CR**

Before: Allard, Chief Judge, Harbison, Judge, and Dickson, District Court Judge.[*]

The appellant, Casey James Donn, seeks rehearing of our decision in this case: *Donn v. State*, No. A-12777, Summary Disposition No. 0179 (Alaska App. Dec. 16, 2020) (unpublished).

Donn's primary assertion is that our decision misperceived the nature of his claim on appeal, and that his true contention is that the trial judge's remarks suggested that the trial judge misunderstood the applicable law. According to Donn, our summary disposition addressed the claim that the trial judge failed to *directly offset* his 180 day sentence for attempted burglary during the disposition of Donn's probation violation while his actual argument was that the trial judge did not understand that he was required to take the 180 day sentence *into consideration* during the disposition.

We have reviewed both the transcript and the audio recording of the disposition hearing, and, based on this review, we disagree with Donn's characterization of the trial court's remarks in this case.

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[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

First, we note that Donn is correct that his attorney argued that the judge "should consider" and "be cognizant of" the 180-day sentence, rather than expressly advocating for a direct offset. In fact, the sentences Donn's attorney recommended did not include any obvious reduction based on the 180-day sentence.

We nevertheless reject Donn's claim that the trial judge failed to take into consideration the 180 day sentence Donn received for the attempted burglary conviction.

As we recounted in our summary disposition, the trial court's *Chaney* analysis clearly included consideration of the 180 days' imprisonment that Donn received for the attempted second-degree burglary conviction.[1] It is true that, when defense counsel informed the court of Donn's 180 day sentence in the attempted burglary case and asked the court to consider that sentence when determining how much time to revoke, the judge responded, "Why should I do that?" But the defense attorney responded by correctly explaining the law to the judge, stating that "even though you're not sentencing on both cases today, . . . the Court should be cognizant of the time [Donn]'s receiving in another case . . . and at least take that into consideration."

When the judge later announced his decision, he did not disagree with the defense attorney's statement of the law. Instead, the judge's comments show that he declined to directly offset the 180 day sentence against the time he was imposing for the probation violation.

Indeed, the chronology of events in this case shows that the judge was aware of the earlier sentence and considered it when he evaluated the appropriate amount of time to impose. The judge explained that the seriousness of Donn's offense and Donn's performance on probation supported revocation of all remaining suspended time. The judge rejected both of Donn's sentencing proposals, finding no reason to impose less than the full 20 months.

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[1] *State v. Chaney*, 477 P.2d 441 (Alaska 1970).

In *Jeter v. State*, a case decided after the disposition hearing in Donn's case, this Court observed: "Normally, if a sentencing judge considers the earlier sentences that the defendant received in related cases, or if the attorneys refer to the defendant's earlier sentences during their arguments to the sentencing judge, this will create a sufficient record for any ensuing sentence appeal — a record sufficient to allow this Court to evaluate the role of those earlier sentences in the sentencing judge's decision."[2]

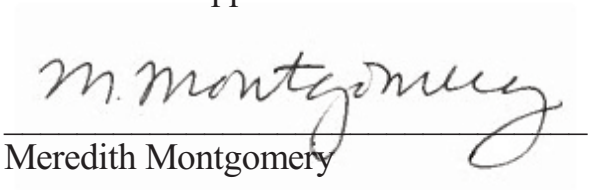
In the present case, both the trial court's findings and the attorneys' comments at the disposition hearing clearly referenced Donn's earlier sentence. We conclude that, although the court declined to directly offset the 180 day sentence against the time imposed for the probation violation, the court was aware of the earlier sentence and considered it when evaluating the appropriate amount of time to impose.

IT IS ORDERED:

1. The Petition for Rehearing is GRANTED IN PART. The last part of the last sentence of the first full paragraph of page three of our decision is amended by striking "even though the court rejected the argument that the 180 days should directly offset any time he received on the probation violation" and substituting "even though the court declined to directly offset the 180 days against any time he received on the probation violation."

2. In all other respects, the Petition for Rehearing is DENIED.

Clerk of the Appellate Courts



Meredith Montgomery

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[2] *Jeter v. State*, 393 P.3d 438, 442 (Alaska App. 2017).

cc: Trial Court Clerk - Palmer
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